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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 2804 of 2007

Petitioner — Deepak Sharma

Versus

Respondents — State of Chhattisgarh and others

Post for order on 15th May, 2007

Sd/-
Satish K. Agnihotri
Judge

(63)

HIGH COURT OF CHHATTISGARH AT BILASPUR
Writ Petition (C) No. 2804 of 2007

Petitioner Deepak Sharma S/o. Ramashankar Sharma Aged about - 50 years R/o. - Ward No. 21, Manendragarh, Distt.- Korea (C.G.)

Versus

Respondents

1. State of Chhattisgarh, Through :- The Secretary, Department of Public Work.
2. Executive Engineer Chhattisgarh Housing Board, Bilaspur Circle Bilaspur (C.G.)
3. Executive Engineer Chhattisgarh Housing Board, Program Circle, Raigarh (C.G.)

Writ petition under Article 226 of the Constitution of India

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Present: Mr. Sourabh Dangi, Advocate for the petitioner.
Mr. Yashwant Singh, Government Advocate for the State/respondents.
Mr. Sanjay Patel, Advocate for the Caveator.

ORDER
(Passed on .../5th Day of May, 2007)

1. The petitioner, by this petition, challenges the legality and validity of the impugned order dated 12.1.2007 (Annexure P-1), passed by the Board of Revenue in Revision case No. R.N. 11/R/A-76/180/2006, whereby notices dated 24.1.2006 and 28.1.2006, issued by the Additional Tahsildar/Tahsildar, Chhattisgarh Housing Board, Division Bilaspur and Raigarh respectively, for recovery of money under Section 146 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as 'the Code, 1959') was held to be in accordance with law.

2. The facts with regard to the claim of the petitioner against the respondents-authorities are not the subject matter in this petition. It appears that the petitioner was granted contract for the work of construction of 100 beds Hostel for Krida Parisar including water supply, sanitary fitting and electrification at

Pendra Road, Distt. Bilaspur, and for the work of construction of 100 beds sports complex at Manendragarh, District- Korea. Some dispute arose between the parties with regard to payment /recovery of amount.

3. The petitioner vide letter dated 14.7.1997 (Annexure P-3) wrote to the Deputy Housing Commissioner, M.P. Housing Board, Bilaspur regarding the action of the Executive Engineer, Bilaspur, in terminating the contract arbitrarily and illegally and withholding all payments was bad. The petitioner further informed the Deputy Housing Commissioner, Bilaspur that in case the matter is not decided within 60 days, he would proceed to file claims before the M.P. Arbitration Tribunal, Bhopal for adjudication. Thereafter, it is not clear from the pleadings asto whether claims were finalized or whether petitioner has moved the Arbitration Tribunal for settling his claims.

4. The petitioner was issued notice dated 24.1.2006 (Annexure P-4) for payment of Rs. 5,51,636/- within a period of 15 days by the Additional Tahsildar, Chhattisgarh Housing Board, Bilaspur. Thereafter, one more notice was issued on 28.1.2006 for recovery of Rs. 10,65,139/- within a period of 15 days, failing which, the said amount was recoverable under the provisions of 146 of the Chhattisgarh Land Revenue Code, 1959.

5. The petitioner challenged the said notices before the Board of Revenue on the ground that the notices were issued without affording any opportunity of hearing to the petitioner. Thus, notices were bad.

6. On perusal the pleadings and documents, it appears that the petitioner was given 15 days time to make the payment, but he did not comply with the order of the said notices and the petitioner also did not make any submission before the Board of Revenue as is evident from the observation of the Board of Revenue in para 5 which reads as under:-

> "5. दिनांक 29.09.2006 को अनावेदकगण कमांक 1 एवं 2 कि ओर से उनके अधिवक्ता द्वारा लिखित तर्क प्रस्तुत किया गया जिसकी प्रति आवेदक अधिवक्ता को दी गई । आवेदक अधिवक्ता द्वारा लिखित

(65)

तर्क प्रस्तुत करने हेतु 15 दिन का समय चाहा गया, लगभग 110 दिन पश्चात् भी आवेदक अधिवक्ता द्वारा लिखित कथन प्रस्तुत नहीं किया जा सका । पश्चात् 27.10.06 को प्रकरण गुण–दोष के आधार पर निराकरण हेतु आदेशार्थ रखा गया ।"

7. The petitioner has slept over his rights after 14th July, 1997 till notices were issued. The petitioner has also not taken any action to get his dues settled by the Arbitration Tribunal as Clause 29, which was incorporated later on vide office order dated 6.8.1986 (Annexure P-6) provides for that in case any dispute arises between the parties, contract on any question relating to the meaning of specification, drawing and instructions or any terms, or condition. The dispute shall be referred to for the Arbitration under the Indian Arbitration Act. (Act No. 10 to 40).

8. It is beneficial to quote Section 146 of the Code, 1959.

> "**146. Notice of demand.** - A Tahsildar or Naib Tahsildar may cause a notice of demand to be served on any defaulter before the issue of any process under section 147 for the recovery of an arrear."

The section 146 of the Code, 1959 clearly provides that the Tahsildar or Naib Tahsildar may cause a notice of demand on any defaulter before the issue of any process under section 147 for the recovery of an arrear.

9. The Supreme Court, in the case of ***Surya Dev Rai Vs. Ram Chander Rai and others (2003) 6 SCC 675*** observed as under:-

> "20. Authority in abundance is available for the proposition that an error apparent on the face of record can be corrected by certiorari. The broad working rule for determining what is a patent error or an error apparent on the face of the record was well set out in *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale.* It was held that the alleged error should be self-evident. An error which needs to be established by lengthy and complicated arguments or an error in a long-drawn process of reasoning on points where there may conceivably be two opinions cannot be called a patent error. In a writ of certiorari the High Court may

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quash the proceedings of the tribunal, authority or court but may not substitute its own findings or directions in lieu of the one given in the proceedings forming the subject matter of certiorari."

"38.....(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction-by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice."

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.....".

10. The impugned order does not suffer from any procedural error, perversity, irregularity or illegality. The claim of the respondents-authorities as per agreement is recoverable under provision of Section 99 of the C.G. Griha Nirman Mandal Adhiniyam, 1972.

11. It is well settled principle of law that under Article 226/227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition in its supervisory jurisdiction if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

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12. Applying the above settled principles of law to the facts of the present case, it does not warrant an interference with the impugned order passed by the Court below.

13. Thus, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Subhash

CP 593-15- (4)

CP 10 L

(2)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION (C) NO. 2812 /2007

PETITIONERS

1. Ramchandra Wasnik, aged about 56 years, son of Shivaji Wasnik,
2. Sanjay Kumar Wasnik, aged about 43 years, son of Shri Shivaji Wasnik

Both are resident of village Ghodari P.H. No. 87, R.I.Circle Mahasamund Tahsil and District Mahasamund (CG)

P.N.D. 3641/07
Name Sankalap Jaiswal
dated 30/4/07

VERSUS

RESPONDENTS

R. 1. Bahur Singh son of Manodhi Kenwat, President Nishad Samaj, resident of village Ghodari, P.H.N. 87, R.I.Circle Mahasamund, Tahsil and District Mahasamund (C.G.)

2. The Tahsildar, Mahasamund, Distt. Mahasamund (C.G.)

3. Sub Divisional Officer (Rev.) Mahasamund, Distt. Mahasamund (C.G.)

4. The Collector, District Mahasamund (C.G.)

5. The Chhattisgarh Board of Revenue, Bench Bilaspur, through – its Chairman.

20/4/07

Jaiswal
(Sankalp Jaiswal)